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Nos. 82-354, 82-355, 82-398

IN THE

Supreme Court of the United States

October Term, 1982

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., *et al.*,
Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

CONSUMER ALERT and PACIFIC LEGAL FOUNDATION,
Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

UNITED STATES DEPARTMENT OF TRANSPORTATION, *et al.*,
Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI FOR RESPONDENT SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK

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Question Presented

Whether the revocation by the National Highway Traffic Safety Administration of the "passive restraint" requirements of Federal Motor Vehicle Safety Standard 208 was arbitrary and capricious?

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BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI FOR RESPONDENT SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK

Respondent, Albert B. Lewis, Superintendent of Insurance of the State of New York, respectfully requests the Court to deny the petitions for writs of certiorari to review the opinion and judgment herein of the United States Court of Appeals for the District of Columbia Circuit.

Statement of the Case

In the interests of brevity, the Court is respectfully referred to the statement of the case contained in the briefs in opposition to certiorari submitted by the other respondents and in the opinion of the Court of Appeals (4-24a).*

Reasons for Denying the Writ

A.

This case fails to present any novel or important question of law. The Court of Appeals simply applied the Administrative Procedure Act test of whether the Department of Transportation's action rescinding Federal Motor Vehicle Safety Standard 208 was, upon the record, "arbitrary and capricious", 5 U.S.C. § 706(2)(A), *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 416 (1971). Congress made this test applicable "to all orders establishing, amending or revoking a Federal motor vehicle safety standard," 15 U.S.C. § 1392(b). This is the standard utilized by the Court of Appeals (24-25a), and all parties agree that it is the proper standard, Motor Vehicles Mfrs. Ass'n pet. pp. 11-12; Consumer Alert pet. p. 14; DOT

* Numbers in parentheses followed by "a" refer to the appendix to the petition for certiorari filed by Motor Vehicle Manufacturers Ass'n.

pet. pp. 16-18; National Ass'n of Independent Insurers' br. in op., p. 6; State Farm br. in op., p. 9.

Although the petitioners allege that this test was applied in a distorted and improper manner, their claims are belied by the Court of Appeals' analysis (49a, *et seq.*). Petitioners are actually asking this Court to second guess the Court of Appeals' review of the factual record; an inappropriate invocation of this Court's jurisdiction, *Mobil Oil Corporation* v. *Federal Power Commission*, 417 U.S. 283, 310 (1974).

B.

The Superintendent of Insurance of the State of New York joins with the other respondents in opposing certiorari for the reasons stated in their briefs. In addition, as the official responsible for the regulation of the insurance industry in a major state, he urges the following considerations:

The introduction into automobiles of passive restraints, especially "air bags", as provided in Federal Motor Vehicle Safety Standard 208, will necessarily result in lower automobile insurance costs by reason of the substantial reduction in deaths and serious injuries from automobile accidents. As the Court of Appeals noted (65a, fn. 37), it is the Superintendent's intent to mandate, forthwith, rate reductions for cars equipped with passive restraints which comply with Standard 208. Reductions will be based upon appropriate actuarial predictions. Rate reductions for policies on vehicles presently equipped with passive restraints have already been approved in New York and other states.

The evidence in the record, much of it from government sources, is overwhelming that passive restraints are effective in preventing death and serious injury in automobile collisions; that if installed, they will be widely used (18-19a, fn. 12-14; 51-53a); that the cost of these devices would be moderate and eventually would save $4.3 billion dollars annually in insurance costs alone. The economic and human benefits from fewer automobile-related deaths and serious injuries would be incalculable (15a).

The practicability of Standard 208 is further demonstrated by the fact that passive restraints have already been installed by such major manufacturers as General Motors, Volkswagen and Toyota in some of their production models (18a, fn. 12).

Regrettably, both the automobile industry and the Department of Transportation have attempted through delays in the Court of Appeals, additional administrative proceedings (85a), and by the instant petitions for certiorari, to delay further the implementation of Standard 208. The Court of Appeals was extremely generous and restrained in giving the Department of Transportation every opportunity to justify the proposed rescission of Standard 208 (68-76a) and, as a matter of equity, gave the petitioners an additional year for compliance, see *Northern Pipeline Construction Co.* v. *Marathon Pipeline Co.*, —— U.S. ——, 102 S.Ct. 2858, 2880 (1982). One can only conclude that the Department of Transportation is attempting to ignore ten years' administrative history in a continuing effort to frustrate the will of Congress to "reduce traffic accidents and deaths and injuries resulting from traffic accidents", 15

U.S.C. § 1392(a), through the adoption of appropriate safety standards.

The clear arbitrariness of the Department of Transportation's position, as demonstrated by the opinion of the Court of Appeals (49a, *et seq.*), weighs heavily against further time-consuming judicial review.

Conclusion

The petitions for writs of certiorari should be denied.

Dated: New York, N. Y.
October 19, 1982

Respectfully submitted,

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